IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 26 OF 1995

Shri Gangadhar Baburao Kangane, Adult, r/o Malwadi, Taluka Sinnar, District Nashik. .. Appellant

Vs

01. The State of Maharashtra
02. Bhika Narayan Kangane, age 65 years, Occupation Agriculture
03. Kashinath Bhika Kangane, age 30 years, Occupation Agriculture
04. Khandu Bhika Kangane, age 26 years, Occupation Agriculture
05. Namdeo Nagu Avhad, age 53 years, Occupation Agriculture.
06. Narayan Gopal Avhad, age 55 years, Occupation Agriculture,
07. Chandrakant Govind Avhad, age 35 years, Occupation Agriculture,
08. Balu Devree Avhad, age 30 years, Occupation Agriculture,
09. Karbhari Raghunath Kangane, age 36 years, Occupation Agriculture,
10. Naliba Rambha Kangane, age 36 years, Occupation Agriculture,
11. Suresh Sakharam Avhad, age 29 years, Occupation Agriculture,

All residents of Malwadi, Taluka Sinner, District Nashik. .. Respondents (Ori. accused in Sessions Case No.174/163 1993.)

Mr. L.H. Patil for the appellant.

Advocate for respondent Nos.2 to 11 - absent.

Mr. D.R. More, A.P.P., for the respondent No.1-State.

CORAM: S.S. PARKAR &
ANOOP V. MOHTA, JJ.

DATED: 26TH APRIL, 2005

ORAL JUDGMENT : [Per Anoop V. Mohta, J.]

1. This is an Appeal under Section 378 of the Criminal Procedure Code (for short "Cr.P.C.") filed by the original complainant of Regular Criminal Case No.236 of 1992 and, thereby, challenged the impugned judgment and order of acquittal passed by the learned Additional Sessions Judge, Nashik, in Sessions Case No.174 of 1993, whereby, all the accused - respondent Nos.2 to 11 were acquitted. The leave was granted. The Appeal was admitted on 23rd January, 1995.

3. None appeared for the respondents-accused. Heard Mr. L.H. Patil, learned counsel appearing for the appellant-original complainant and the learned A.P.P. Mr. D.R. More for respondent No.1-State of Maharashtra.

3. We have gone through the record in extenso. After considering the respective submissions made by the parties and the record, we are of the view that the order of acquittal is correct and needs no interference.

4. Following are the supporting facts and

reasoning.

FACTS:-

The deceased Kailash was in military service. The field of the complainant is near the house of the deceased. The complainant used to take water to irrigate his lands from the common well in which all the accused have a share. On 24th September, 1992, there was quarrel between accused Nos.1 and 2 and the deceased Kailash about priority in taking water from the common well. Threat was given to the deceased Kailash. The wife of the complainant (the mother of the deceased [PW2]), after returning from the field noticed that her children Santosh and Aruna returned home, except the deceased. They searched, but could not trace him out. On the next morning, the complainant's wife, along with her sister in law, Hirabai (not examined) noticed that the deceased was lying in the field in the injured condition and blood was oozing from his mouth and nose. The villagers gathered there after hearing shouts and cries. All the accused also reached on the spot. The Police also reached and Panchanama was drawn. The dead body was sent to the hospital at Sinner.

5. The complainant's wife with Police returned and saw accused Nos.6 and 7 and the door of her house was locked. The said lock was opened by accused No.6 with the key possessed by him. He fetched one glass from the complainant's house alleged to be used for consuming poison by the deceased and showed it to the Police. The brother of Hirabai Sukdev-PW3, also came there on 25/9/1992 at 10.00 a.m. and informed that on 24/9/1992 at about 6.00 p.m., when he was chitchatting with the deceased accused Nos.1 to 5 came to meet the deceased Kailash on the pretext of settling the dispute of the well-water. The deceased went along with them. In this background, it was alleged that all the accused, in furtherance of their common intention, committed the murder of the deceased Kailash. The funeral was performed by the complainant and his family. After receiving the information, the Police had registered A.D. No.25 of 1992 and PSI Deshpande had investigated the same. The private complaint against respondent Nos.2 to 11 was lodged by the complainant as the Police failed to take any cognizance of the matter. The investigation was thereafter transferred to the Local Crime Branch and PW7, PSI Rajput took charge of the matter. PSI Rajput visited the spot and recorded the statements of five witnesses, including that of the complainant. After the inquiry, it was discovered that

the deceased was poisoned by someone and, therefore, PSI Rajput lodged the complaint for and on behalf of the State only against the four accused vide Exhibit-68, which was registered as C.R.No.7 of 1993 and thereafter, further investigation commenced. The charge-sheet was filed on 15th March, 1993. Both the cases were clubbed together and common evidence was recorded in Sessions Case No.174 of 1993. The charges were framed against all the accused under Sections 302, 328 and 201 r/w 34 of IPC. All the accused pleaded not guilty and claimed to be tried. The prosecution has examined 7 witnesses. There was no defence witness examined.

REASONING :-

6. As per the Post Mortem Report, the probable cause of death was cardio-respiratory failure due to shock due to poisoning. According to the Chemical Analyzer’s Report also, on external and internal examination, the death was due to cardio-respiratory failure due to consumption of fatal dose of organochloro endosulfan. All the injuries are simple. There is no mention that the death was caused by the strangulation, as sought to be contended by the prosecution. There is no doubt that the death by the suffocation and/or the death by the strangulation are two different things. In

absence of any contra evidence, the evidence of the doctor and the post mortem reports and, as observed by the learned Judge, shows that the death was due to poisoning.

7. The Apex Court has held in **Bhupinder Singh Vs. State of Punjab** [reported in (1988) 3 S.C.C., 513] that prosecution must establish, in case of death by poisoning, that the accused had an opportunity and actually administered the poison to the deceased, in addition to the circumstantial evidence. In the present case, there is nothing to establish even the circumstances that the respondents-accused had the poison and the opportunity and they administered the said poison, which resulted into death of the deceased. On the contrary, the learned Judge has observed that:

> *"The probability of suicidal death is much more than the homicidal death by administering poison to the said Kailash. There is evidence on the record and also as per the defence case, that the daughter of the maternal uncle of the deceased Kailash had refused to marry him and, therefore, he might have committed the suicide."*

Some such suggestions were also put to the mother of the deceased PW2 Ratanbai Kangane (Exh.58). PW2, in her examination-in-chief has stated that *"At that time, accused Nos.6 and 7 stated that Kailash had consumed*

poison. I had denied it. At that time, accused No.6 opened the lock of my house with the key from, his pocked. At that time, accused No.6 had given the poisoned glass to the Police who were also present." The prosecution was unable to bring on the record, anything to prove that the respondents-accused had poisoned or administered the poison and kept the glass in the room, as referred above. The glass was also not sent for any Chemical Analyzer's Report, which also dislinks the prosecution case and/or does not connect the said glass and poison with the deceased. The prosecution's case of strangulation, which was developed subsequently, though initially it was of poisoning, itself also raises various doubts.

8. This witness had further stated that as per Sukdev (PW3), the deceased Kailash had gone along with the accused Nos.1 to 5. In the evening, the mother of the deceased was able to inform about the incident to her husband PW6 Gangadhar Kangane. We have noted that no complaint was lodged by the mother or the father of the deceased immediately. There is nothing to support the case of this witness that there was any quarrel which had taken place in the morning. There are various omissions which were recorded in her cross-examination. She had admitted *"Nobody from the village had witnessed*

the quarrel in the morning." As per the record, the complaint was lodged on 26th September, 1992, whereas the incident took place on 24th September, 1992. This witness has admitted that Sukdev is the brother of Hirabai, her sister-in-law. The statement of this witness was recorded on 26th September, 1992. The mother has admitted that the deceased Kailash had no enemical terms with the villagers. As the prosecution has not examined the IO who was incharge at the relevant time and who had recorded the statements, therefore, all these omissions and contradictions, raises various doubts and weakens the prosecution case. This witness also nowhere supports the complaint of implicating accused Nos.6 to 11 in this matter. There is nothing in the testimony of this witness to connect the prosecution case or any circumstances to bring the guilt of all the accused committing the murder of the deceased by administering poison or by any other means.

9. PW3 Sukdev Punja Darade (Exh.59) is the cousin maternal uncle of the deceased. As also stated by PW2, he had been to the house of Maruti (PW4), the brother of Gangadhar (PW6) i.e. the father of the deceased. On 25th September, 1992, at about 9.00 a.m., on receiving the information about the incident, he returned to the spot at about 10.00 a.m. At that time, the Police was

present there and the discussion about some glass was going on. The accused Narayan was also present there. He identified the accused in the Court for the first time. This witness, however, admitted that he had not made any statement to the Police nor lodged any complaint regarding the incident. Except this witness and the hearsay evidence of PW2, there is nothing on the record to suggest or to prove that accused Nos.1 to 5 had visited the house of the deceased and the deceased Kailash was last seen together with them. It is quite unnatural that PW2 or PW6 took no steps to search or even to lodge a complaint of their missing son Kailash as he was not present in the house throughout the night of 24/9/1992. The mother of the deceased was unable to support the presence of Sukdev (PW3) at 6.00 p.m., at the house of the deceased or vice-versa. When PW2 reached home, her children Santosh and Aruna had returned home. They must have returned between 5.30 p.m. to 6.00 p.m. In that case, the children could have noticed Kailash in the house along with PW3 Sukdev. There is nothing to connect or prove the presence of Sukdev at 6.00 p.m. and/or his presence to witness the deceased with accused Nos.1 to 5. No independent witness was examined to corroborate the mother’s version that she had enquired from the other villagers about the deceased. Even two children Santosh and Aruna were also

not examined. Therefore, the uncorroborative and unreliable version of PW2 and PW3, the mother and Sukdev, raises various doubts in the prosecution case. The inaction on the part of these two witnesses along with other witnesses also raises various doubts in their version, as well as, in the prosecution case.

10. The learned Judge has also observed that Dr. Karande (PW1) has stated that the death of Kailash took place within 6 to 8 hours after the last meals. The mother of the deceased (PW2) had stated that the deceased had taken his meals near about 10.00 a.m. on 24/9/1992. The deceased was not at home for the dinner. Therefore, the death of the deceased must have occurred in between 4.00 p.m. to 6.00 p.m. on 24/9/1992. Hence, the evidence of PW3 Sukdev that he had the opportunity to see Kailash and accused Nos.1 to 5 at about 6.00 p.m. on 24/9/1992 also raises various doubts.

11. PW4, Maruti Baburao Kangane is the paternal uncle of the deceased. This witness supports the morning incident of 24/9/1992 and has endorsed that PW2 Ratanbai and Santosh were present at that time. However, this witness was unable to state as to why it was not recorded in his statement that the accused

persons had threatened the deceased and that PW2 Ratanbai was with him. The omission and contradiction of this witness also remained intact for want of evidence of the relevant IO, the important prosecution witness. PW5, Pandharinath Dagu Shelke is a Panch witness to the dead body of the deceased (Exh.37).

12. PW6, Gangadhar Baburao Kangane is the father of the deceased. He had no personal knowledge about the incident. After performing the funeral on 26/9/1992, the private complaint was lodged. There is no supporting material or any reason for implicating and/or naming all the accused Nos.2 to 11 in the private complaint.

13. PW7, Dilipsingh Ganpatsingh Rajput was the PSI of the Local Crime Branch. He had recorded the statements after receipt of A.D. No.25/1992 in question. The complaint (Exh.68) was lodged by this witness and the offence was registered under C.R.No.7/1993. This witness has proved various other documents and submitted the charge-sheet on 15th March, 1993. The prosecution has not examined the relevant Officer who had recorded the various statements including that of the prosecution witness in question. There is no doubt that all this resulted into faulty and

weak investigation and enquiry in the matter.

14. There is no direct evidence to connect the accused with the crime in question. The whole submission of the appellant-complainant to reverse the order of acquittal and to remand the matter is based upon the material on the record, including the submission that the deceased was last seen together with accused Nos.1 to 5 as deposed by PW3 Sukdev. There was no proper investigation and/or enquiry. Even the main investigating Officer was not examined. There were various lacunas in the investigation. There was no discovery of weapons in this matter. The death was alleged to be caused by strangulation. The Post Mortem Report, however, suggests various injuries on the person of the deceased. The record shows that the glass was not sent for any chemical analysis report. For the reasons, as referred in other paragraphs, appellant’s submissions are therefore, unacceptable and difficult to entertain in the facts and circumstances of the case.

15. The prosecution, according to us, failed to prove the motive so as to connect and hold all the accused responsible for causing the said murder. On the contrary, the probable case of poisoning, if taken note of and as observed by the learned Sessions Judge, the

prosecution case raises various doubts. The private complaint was lodged after two days and therein, respondent Nos.2 to 11 were named, whereas, in the complaint lodged by the Police after due enquiry, only four accused were named. There is nothing to show as to why the names of respondent Nos.7 to 11 were involved in the instant case. However, even on merits, after going through the evidence of all the witnesses and the record, the prosecution has failed to prove and support even the theory of last seen together for want of concrete evidence and/or concluding and supporting material. There is no link or connecting evidence to draw inferences, as sought to be contended by the learned Advocate appearing for the appellant. There is no case made out to reverse the finding of acquittal passed by the learned Judge. The principle of circumstantial evidence as laid down in **Virbhan Singh & Anr. Vs. State of U.P.** [reported in AIR 1983, S.C., 1002] as relied by the learned Advocate appearing for the appellant, in the facts and circumstances of the present case, does not support the submissions as raised by the Advocate appearing for the appellant.

16. Therefore, on scrutiny of the evidence, we are fully satisfied that the conclusion recorded by the learned Sessions Judge is perfectly correct and sound.

The view taken by the learned Judge is, therefore, a possible view as the prosecution has failed to bring on the record, connecting material and circumstances to connect the respondent with the crime. Therefore, for want of corroborative evidence and lack of proper material to support the prosecution case, according to us also, the benefit of doubt as given by the learned Judge is correct.

17. We are also maintaining the order of acquittal as no case is made out to interfere with the reasoning given by the learned Sessions Judge. There is no Appeal filed by the State against the impugned order of acquittal. The view taken by the learned Judge appears to be plausible and reasonable and within the framework of law and the record.

18. In the result, the order of acquittal is confirmed. The Appeal is dismissed.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]

[srpasha@hc]